

**MINUTES OF THE ADJOURNED REGULAR MEETING
OF THE CITY OF SAN CLEMENTE
PLANNING COMMISSION
May 8, 2019 @ 6:00 p.m.
City Council Chambers
100 Avenida Presidio
San Clemente, CA**

1. CALL TO ORDER

Chair Crandell called the Adjourned Regular Meeting of the Planning Commission of the City of San Clemente to order at 6:00 p.m.

2. PLEDGE OF ALLEGIANCE

Vice Chair Ruehlin led the Pledge of Allegiance.

3. ROLL CALL

Commissioners Present: Chris Kuczynski, Jason Talley (8:09 p.m. arrival), Zhen Wu;
Chair pro tem Michael Blackwell, Vice Chair Jim Ruehlin,
Chair Barton Crandell

Commissioners Absent: Donald Brown

Staff Present: Gabriel J. Perez, City Planner
Nestor Mangohig, Senior Traffic Engineer
Katie Crockett, Associate Planner
Kyle Webber, Community Development Technician
Matthew Richardson, Assistant City Attorney
Eileen White, Recording Secretary

Chair Crandell announced that the Honorable Mayor Steve Swartz had passed away early this morning. He offered condolences to the family and led a moment of silence in his honor.

4. SPECIAL ORDERS OF BUSINESS

None

5. MINUTES

- A. Minutes from the Regular Study Session Meeting of March 6, 2019 continued from April 17, 2019.

Minutes of the Planning Commission Study Session of March 6, 2019, continued to the May 23, 2019, meeting due to lack of quorum.

- B. Minutes from the Regular Planning Commission Meeting of March 6, 2019, continued from April 17, 2019.

Minutes of the Planning Commission Regular Meeting of March 6, 2019, continued to the May 23, 2019, meeting due to lack of quorum.

- C. Minutes from the Adjourned Regular Planning Commission Meeting of April 3, 2019 continued from April 17, 2019.

A Motion was made by Commissioner Kuczynski and seconded by Vice Chair Ruehlin to receive and file the minutes of the Adjourned Regular Planning Commission Meeting of April 3, 2019, as submitted.

Motion carried 3-0-4, with Commissioner Brown, Commissioner Talley, Commissioner Wu, and Chair pro tem Blackwell being absent.

- D. Minutes from the Adjourned Regular Planning Commission Meeting of April 17, 2019.

A Motion was made by Commissioner Kuczynski and seconded by Commissioner Wu to receive and file the minutes of the Adjourned Regular Planning Commission Meeting of April 17, 2019, as submitted.

Motion carried 4-0-3, with Commissioner Brown, Commissioner Talley, and Vice Chair Ruehlin being absent.

6. ORAL AND WRITTEN COMMUNICATION

None

7. CONSENT CALENDAR

- A. **Proposed Parking Prohibitions at 702 Avenida De La Estrella (Mangohig)**

A Motion was made by Vice Chair Ruehlin and seconded by Chair pro tem Blackwell to forward to City Council a recommendation to approve parking prohibitions on the east side of Avenida Del La Estrella adjacent to 702 Avenida De La Estrella, for a distance of thirty (30) feet between the two driveways, and for a distance of thirty (30) feet between the handicap parking lot driveway and the curb return of El Oriente; and to reduce the parking prohibition distance on the east side of Avenida De La Estrella, from the southeast corner of El Oriente, from a distance of forty-three (443) feet to twenty (20) feet.

Motion carried 5-0-2, with Commissioner Brown and Commissioner Talley being absent.

[ACTION SUBJECT TO CITY COUNCIL APPROVAL.]

8. PUBLIC HEARING

A. 940 Calle Amanecer K and L – Amendment to Conditional Use Permit 18-607/Minor Architectural Permit 19-109 – Drift Distillery Modifications (Carrillo)

A request to consider an amendment to Conditional Use Permit 17-036 to expand a tasting room and increase seating for indoor and outdoor on-site consumption of a full range of alcohol, in conjunction with a new outdoor patio.

A Motion was made by Vice Chair Ruehlin and seconded by Commissioner Kuczynski to continue 940 Calle Amanecer K and L – Amendment to Conditional Use Permit 18-607/Minor Architectural Permit 19-109 – Drift Distillery Modifications to the May 23, 2019, Adjourned Regular Meeting.

Motion carried 5-0-2, with Commissioner Brown and Commissioner Talley being absent.

[ITEM CONTINUED. PLANNING COMMISSION DECISION PENDING.]

B. 990 Avenida Vista Hermosa – Discretionary Sign Permit 18-215 – Vista Hermosa Esplanade (Target Center) (Crockett)

A request to modify an existing Master Sign Program for the Target retail center to include additional signage for the approved expansion of the retail center (Vista Hermosa Esplanade) located at 990 Avenida Vista Hermosa.

Katie Crockett, Associate Planner, narrated a PowerPoint Presentation entitled, "Vista Hermosa Esplanade, MSP Amendment DSP 09-317," dated May 8, 2019. A copy of the Presentation is on file in Planning Division.

In response to questions, she noted the City's Landscape Consultant had reviewed the project landscaping plans with no comment, and trees on site are proposed to be relocated; advised any existing landscaping deficiencies will be handled through Code Compliance; noted Target is working diligently with staff to update/improve its landscape maintenance. She is unsure whether Avenida La Pata has been designated a scenic

corridor by the City and noted the five monument signs originally proposed have been reduced to three.

Greg Fick of Tait and Associates, Inc., representing the developer, advised the monument signs, which measure less than six feet, are a condition of the leases and important for advertising the location as well as attracting tenants.

Matt Kohlenberger, project Landscape Architect, described the goals, plant varieties, and site constraints associated with the landscaping. He agreed to review and consider moving the existing trees up the slope to create background greenery for the signage. Minimum 48" to maximum 60" trees are currently proposed.

Chair Crandell opened the public hearing, and there being no public testimony, closed the public hearing.

During the ensuing discussion, the Commissioners, either individually or in agreement, provided the following commentary:

- Referred to recent signage approvals for monument signs that do not feature individual tenant identification; suggested elimination of individual tenant identification to minimize impact of signage to the scenic corridor; noted substantial distance between monument signage and new tenant locations; supported a third monument at the location without tenant identification.
- Expressed concern with installing a new monument sign at the intersection of Avenida La Pata and Avenida Vista Hermosa as it's located at the intersection of 2 scenic corridors.
- Suggested allowing tenant identification on both existing monument signs.
- Commented the location is not a City gateway; noted the signage proposed does not block views, is nestled up against the hillside and will enhance a currently bare corner. Not too much copy is proposed for the sign and what is proposed is sensitive to the project.
- Stated the additional trees, shrubbery, and greenery proposed would enhance the monument sign landscaping bed.

Mr. Fick agreed on behalf of the applicant to an additional condition that would require modification of the location of the four proposed Platanus trees.

A Motion was made by Chair pro tem Blackwell and seconded by Commissioner Kuczynski to adopt Resolution No. PC 19-012, a Resolution of the Planning Commission of the City of San Clemente, California, approving Discretionary Sign Permit 18-215, a request to

amend the Target Master Sign Program (DSP 09-317) to include signs for the expansion of the retail center approved through Resolution PC 18-034, located at 990 Avenida Vista Hermosa.

Amended as follows:

Add the following condition of approval: The four trees depicted as Platanus species on the approved Conceptual Landscape Plan shall be relocated as follows on the final detailed landscape and irrigation plan: at least two shall be located behind new monument Sign Type 4 (one tree approximately behind each set of tenant names), and all shall be located a minimum of ten feet from back of sidewalk.

Motion carried 4-1-2, with Commissioner Wu being opposed, and Commissioner Brown and Commissioner Talley being absent.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

C. 127 South El Camino Real – Special Activities Permit 19-079 – Live Bands at Ole’s Tavern (Webber)

A request to allow up to 14 special events consisting of an indoor live band and amplified music during the 2019 calendar year at a local bar establishment. The site is located at 127 South El Camino Real in the Mixed Use 3.0 Zoning District and Architectural and Central Business Overlays (MU 3.0-A-CB).

Kyle Webber, Community Development Technician, summarized the staff report. The applicant is proposing to add at least 1, potentially up to 14, live music events during the summer months.

In response to questions, Technician Webber advised the applicant is aware the amplification cannot exceed 90 decibels; noted no complaints were generated by the one event, but staff observed a violation when the door was left open. Because the subject door is the only entrance/exit, staff is proposing the door be allowed to remain open during the events. In the event the amplification exceeds the maximum decibels, equipment will be required that turns off the sound if it rises above the maximum. Webber mentioned the door is self-locking for business reasons. Staff suggested the door be allowed to stay open to avoid increase/decrease in amplification as it is open/closed, allow for ventilation, eliminate unreasonable requirement for a doorman, and eliminate potential violation each time the door is opened.

City Planner Perez advised the events are a temporary use. The event space is still subject to the existing occupancy restrictions and no additional parking is required. The special events are not allowed to exceed existing capacity.

Greg LeRoy, the applicant, noted the existing door automatically locks each time it's closed, so it's preferable that it be left open for ventilation. When offering special events, he always has a doorman. There is a jukebox in the room with similar amplification as a live band that plays constantly and generates no complaints. The special event proposed is for Sunday afternoon for four hours. At the last event, 50 people attended and the current seating capacity for the room is 86. The door that currently exists is a Dutch Door, which would allow the top half to remain open for ventilation. Many patrons living nearby walk to and from the location.

Chair Crandell opened the public hearing and announced receipt of a letter from a resident opposed to the proposed use. There being no additional public testimony, Chair Crandell closed the public hearing.

Individual Comments/Suggestions:

- In order to be consistent with other Special Activity Permits and the conditions associated with businesses providing live music, doors and windows should remain closed. A Dutch Door would not be appropriate for this use.
- Suggested the automatically locking door be modified so that it doesn't automatically lock when the special events take place.
- Suggested an additional condition of approval that would prohibit occupancy from exceeding capacity during special events.
- Concern expressed that existing parking on subject property may not support the number of attendees of the special activities. Established that there is public parking available in the surrounding area.

A Motion was made by Chair pro tem Blackwell and seconded by Commissioner Wu to adopt Resolution No. PC 19-011, a Resolution of the Planning Commission of the City of San Clemente, California, approving Special Activities Permit (SAP) 19-079, to allow indoor amplified sound with a live band at a bar, Ole's Tavern, located at 127 South El Camino Real.

Amended as follows:

Page 7, Condition no. 1.11, after "Permits" insert, "or cause substantial traffic or parking issues,"

Page 7, Condition no. 7.9, after "windows" insert, "and doors"

Page 9, Condition no. 7.18, strike in its entirety.

Motion carried 5-0-2, with Commissioner Brown and Commissioner Talley being absent.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

D. Zoning Amendment 17-043 – Check Cashers, Pawnbrokers, and Smoke Shops Ordinance (Perez)

Public hearing to consider a proposal to amend San Clemente Municipal Code Title 17, the Zoning Ordinance, regarding the regulation of check cashers, pawnbrokers, and smoke shops. The Planning Commission will be considering changes to the Zoning Ordinance in Chapters 17.28, 17.36, 17.40, and 17.88 related to special uses, the permitted zones for the special uses, and related definitions.

Gabriel J. Perez, City Planner, narrated a PowerPoint Presentation entitled, "Zoning Amendment 17-043, Standards for Check-Cashers, Pawnbrokers, and Smoke or Tobacco Shops," dated May 8, 2019. A copy of the Presentation is on file in Planning Division.

Chair Crandell opened the public hearing.

Theodore Lee, Laguna Niguel resident and San Clemente Smoke Shop owner, provided public testimony and stated he has been in business for 20 years in this location. Although he has been informed his business is grandfathered and will be able to operate as current unless he relocates or expands, he expressed concern regarding some of the regulations proposed. He is currently open from 9:00 a.m. to 10:00 p.m. daily; if he had to close at 7:00 p.m. per the new regulations, it will impact his business.

During the ensuing discussion, the Commissioners, either individually or in agreement, provided the following commentary:

- Established from staff that the distance buffers proposed are arbitrary and chosen after review of other cities' regulations; they can be increased or decreased at the Commission's discretion.
- Recommended that regulations regarding smoking and smoking or tobacco shops should apply to vaping as well.
- Referred to past minutes where this item was discussed that reference requests for additional information and requests for clarification that has not been provided; suggested no backup information is being presented to justify the regulations proposed. Suggested findings in the resolution be
- Clarified one of the reasons for including the regulation is to establish standards that can be enforced going forward.

- Suggested eliminating smoke shop uses from Mixed Use and Neighborhood Commercial zoning designations, as smoking creates a health risk for others living nearby, especially for children.
- Expressed concern of imposing arbitrary rules that may be unnecessary. If check cashers and/or pawnbrokers attract customers who may be a problem, there may be a need for security plans, but questioned whether security plans should be required for smoking/tobacco businesses; questioned why these businesses should not be allowed to operate up to 10:00 p.m.
- Suggested staff provide the information requested at the previous meeting, revise the ordinance in response to concerns expressed this evening, and bring it back to the Commission for further review/final approval.
- Regulations proposed should be reasonable, defensible, make sense from a land use perspective, and backed up with relevant facts.
- Suggestion that smoke shops not be permitted in mixed-use areas.
- Expressed concern if existing businesses would be protected from the proposed regulations if adopted. Assistant City Attorney indicated that the existing businesses appear to be protected by the nonconforming regulations of the City.
- Expressed concern that without proof of illicit activities, the City's regulations of the subject uses may be considered arbitrary and capricious. Assistant City Attorney mentioned these businesses are not constitutionally protected uses and the City has broad legislative authority to regulate these uses as it sees fit.
- Recommended that staff communicate with existing operating businesses, that are subject of the proposed ordinance, to receive communications about the proposed regulations.

A Motion was made by Vice Chair Ruehlin, and seconded by Commissioner Wu, to continue Zoning Amendment 17-043 – Check Cashers, Pawnbrokers, and Smoke Shops Ordinance, to the Regular Meeting of June 19, 2019. The Commission also recommended that amendments include prohibitions of smoke shops in mixed-use zones, prohibitions of smoke shops in neighborhood commercial zones within 300 feet of existing residential development, extending proposed smoke shop operating hours from 7 p.m. to 10 p.m., and additional staff research on illicit activities related to the subject uses.

Motion carried 6-0-1, with Commissioner Brown being absent.

[ITEM CONTINUED. PLANNING COMMISSION DECISION PENDING.]

9. NEW BUSINESS

None

10. OLD BUSINESS

Commissioner Talley referred to recent City Council consideration of the City's Leaf Blower Ordinance. The Ordinance was presented to the Planning Commission for consideration, revised, and forwarded to City Council. He questioned why City Council was presented with an alternative recommendation proposed and recommended for approval by staff that had not been vetted at the Planning Commission meeting. Additionally, he questioned why the Commission had not been notified in advance or subsequent to the alternative/revised recommendation. Mr. Talley stated the appropriate course of action should have been for this item to return to the Planning Commission.

City Planner Perez explained that the alternative recommendation was created in response to concerns raised by Code Compliance and Public Works staff.

The Commission concurred to add this item to a future agenda for discussion/consideration.

11. REPORTS OF COMMISSIONERS/STAFF

- A. Development Story Map Demonstration
- B. Tentative Future Agenda
- C. Zoning Administrator Minutes of April 4, 2019
- D. Staff Waiver 19-106
- E. Staff Waiver 19-129
- F. Staff Waiver 19-141

City Planner Perez demonstrated a new online interactive tool that identifies all current, ongoing projects and is available to the public via the City's website. By selecting the identified location on the map, users can look at projects and get the project description, information, and photos.

12. ADJOURNMENT

A Motion was made by Commissioner Talley, and seconded by Vice Chair Ruehlin, to adjourn at 8:46 p.m. to the Adjourned Regular Meeting of the Planning Commission to be held on **Thursday, May 23, 2019**, at 6:00 p.m. in Council Chambers located at 100 Avenida Presidio, San Clemente, California, as the May 22, 2019, Regular Study Session and Regular Meeting have been previously cancelled.

Motion carried 6-0-1, with Commissioner Brown being absent.

Respectfully submitted,



Barton Crandell, Chair

Attest:



Gabriel J. Perez, City Planner